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ABSTRACT

This document begins a series of issues on employment and dismissal matters of interest to school administrators in North Carolina. It addresses some of the more basic employment concepts, first describing the legal requirements in the state. In North Carolina, local school boards' authority to hire employees is contained in a variety of statutes. An interpretive analysis section describes legal protections for public school employees mandated by the Fair Employment and Dismissal Act (G.S. 115C-325), passed on July 1, 1972. The third section provides answers to frequently asked questions. The appendix discusses federal and North Carolina state laws relating to employment, specifically: blacklisting employees, general duties and powers of local boards of education, superintendent selection and duties, methods of selection and requirements for principals and supervisors, and the hiring of teachers and school personnel. (LMI)

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A Series of Discussions on Legal Issues in Elementary and Secondary Education

SCHOOL MANAGEMENT ADVISOR

By Harry E. Wilson, Agency Legal Specialist

NORTH CAROLINA DEPARTMENT OF PUBLIC INSTRUCTION EDUCATION BUILDING, RALEIGH, NC 27601-2825 919/715-1000

Issue 22: 1993 BOB ETHERIDGE, SUPERINTENDENT OF PUBLIC INSTRUCTION

Employment Basics

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Employment Basics

LEGAL REQUIREMENTS

The authority of local school boards to hire employees is contained in a variety of statutes. G.S. 115C-47(13) and 115C-271 authorize boards to "elect" [employ] a school superintendent. G.S. 115C-47(17), 115C-278 and 115C-284(g) contain the authority for hiring assistant superintendents and supervisors. Other references include G.S. 115C-284 (principals), 115C-299 (teachers), and 115C-315 (all other employees). G.S. 115C-276(j) establishes the superintendent's role in the hiring process. Limitations on a board's employment authority involve prohibitions against discrimination. G.S. 143-422.2 expresses the State's policy of equal employment opportunity. 42 U.S.C. § 2000e et seq. [Title VII of the Civil Rights Act of 1964] prohibits discriminatory employment practices. Relevant portions of these statutes are reproduced in the Appendix.

INTERPRETIVE ANALYSIS

This issue begins a series of issues on employment and dismissal matters. It addresses some of the more basic employment concepts to lay a foundation for the remaining topics.

Until July 1, 1972, school boards in North Carolina were free to hire and fire practically all employees as they chose. On that date, the Fair Employment and Dismissal Act (G.S. 115C-325) came into effect, providing protection for certain professional employees who attain career status. The status of these employees before 1972 and for most other current employees was that of employees at will, which is the common law employment status in North Carolina. That is, unless there are statutory provisions or contract terms to the contrary, an employment contract may be terminated at the will of either party for no reason or for an arbitrary or irrational reason. The only limitation to this idea is that employers may not terminate the employment based on constitutionally protected actions of the employee. [See Issue 23, Employment at Will, for further information.]

Every public school employee in North Carolina is an employee of the local school board for whom that person works. Thus, local school boards have the authority to hire, evaluate, reward, discipline, and dismiss their employees. Although the legislature or the State Board of Education establishes qualifications for many categories of school employees and provides most of the funds for their salaries and benefits, these employees remain local board employees, not State employees. Within these limitations and subject to legal protections for employees and applicants, school boards have total discretion in dealing with their employees.

Legal protections are both statutory and constitutional. Federal laws prohibit discriminatory employment practices that are based on age, race, sex or sexual preference, color, national origin, religion, handicap or disability. The 14th Amendment to the United States Constitution also requires that applicants be provided equal protection of the laws. This means that persons who share common characteristics may not be treated differently in employment decisions without some reasonable basis for the differing treatment. In other words, the employer may not act arbitrarily. [As noted earlier, an employee at will may be dismissed for an arbitrary reason. This remains true as long as the reason does not violate federal discrimination laws.]

Professional school employees must generally be certified by the State and meet any experience requirements established by law. These

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employees may be placed into two broad categories - those who are eligible for career status and those who are not. Persons who are not eligible for career status include superintendents, associate superintendents, and assistant superintendents. Those who are eligible for career status include teachers, principals and supervisors. However, persons who become principals, supervisors or directors after July 1, 1995 will not be eligible for career status. While this may appear simple enough, the statutory definition of "teacher" is a bit complicated. According to G.S. 115C-325(a)(6), a teacher:

- holds at least a current, not expired, Class A certificate or a regular, not provisional or expired, vocational certificate issued by the Department of Public Instruction;
- whose major responsibility is to teach or directly supervise teaching or is paid as a classroom teacher; and
- who is employed to fill a full-time, permanent position.

The Attorney General has interpreted these provisions to mean that assistant principals, school social workers, guidance counselors, school psychologists, coordinators of psychological services, occupational therapists, speech therapists and physical therapists all qualify as teachers under the law. Media personnel and curriculum instructional personnel should also qualify for career status under the statutory definition. In 1993 the legislature enacted a law that makes assistant principals and other school administrators ineligible for career status.

Nonprofessional school employees are at-will employees and have no statutory protections relating to job security or dismissal. The school board might unintentionally create additional rights for these employees through board policy, employee handbooks, or other similar methods that indicate the employee has a right to continued employment in the absence of specified conditions or that set out a process for dismissal.

Q: May school boards legally employ both spouses or other relatives within the school system or at the same school?

A: This is a matter of local board policy, because there is no state law that prohibits nepotism in the school system. In developing their policies, boards might consider whether relatives should be within the same line of reporting relationships (in which one relative ultimately supervises the other), what the public's perception of employing relatives might be, and similar concerns.

Q: What right does the public have in the board's employment decisions? For example, if the board is considering moving instructional or supervisory staff from one school to another, how may the public affect that decision?

A: Citizens have the right to express their views to the board on matters of public concern. The assignment of staff to schools is a public concern, and the public often informs the board of its opinions in this regard. However, the final decision belongs to the board, which must consider the best interest of the entire community.

G.S. 115C-325(b) also authorizes anyone to submit letters of complaint, commendation, or suggestion for correction or improvement about a teacher's personal conduct to the superintendent to be placed in the teacher's personnel file. The teacher has the right to see the letter five days before it is placed in the personnel file and to submit a denial or explanation in response. Boards may consider allowing similar comments to be placed in the personnel files of all other employees.

Q: May the State Board of Education or the Department of Public Instruction prevent a school board from hiring a given person? May either require a board to dismiss an employee?

A: No, to both questions. State officials may advise school boards whether a given person meets state qualifications for the position, and the statutes forbid boards from hiring persons who do not qualify for certification in positions that require certification. No law empowers state officials to intervene in the hiring process, however. Yet an unsuccessful applicant could bring suit against the board, and any citizen within the local school administrative unit could sue to force the board to hire only persons who hold proper credentials.

Q: What requirement does the school board have to advertise or otherwise post vacancies?

A: No State law requires employers to advertise job vacancies. Title VII of the Civil Rights Act of 1964, which guarantees equal employment opportunity free from discrimination, does not specifically require job advertising. However, several courts have found discriminatory hiring practices to exist where the employer failed to post notices of job vacancies. In other cases, employers have violated Federal law by including in job advertisements a preference based on race, color, religion, sex, national origin or age.

In addition to advertising, posting helps to notify potential applicants of available jobs, the criteria for those jobs, and the method to apply for them. The failure to post vacancies may indicate discriminatory employment practices.

School boards may best defend legal challenges to their hiring practices by adopting and implementing policies designed to notify potential applicants of job vacancies through advertising and posting notices, then evaluating and selecting applicants according to established, non-discriminatory criteria.

Q: What questions or topics should persons who interview job applicants be sure to avoid?

A: Interview questions should always be job-related. Questions that relate to one's family, marital status, arrest record, age, disabilities, or organizational affiliation are almost certain to be considered discriminatory. While the interviewer should not ask about arrests, one's criminal convictions are a proper topic of inquiry.

Q: May school personnel in one school system legally advise other school systems not to hire a discharged employee with whom the system had problems?

A: No. G.S. 14-355 makes it a misdemeanor to attempt to blacklist any discharged employee, and a person who violates the law may be fined in criminal court and sued in civil court for damages. If the discharged employee seeks employment elsewhere and the school system is asked the reason of the discharge, school personnel may issue a truthful statement of the reason.

APPENDIX
Federal Laws Relating to Employment

42 U.S.C. § 2000e-2. Discrimination because of race, color, religion, sex, or national origin

(a) Employers. It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

(d) Training programs. It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

(h) Seniority or merit system; ability tests. Notwithstanding any other provision of this title, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided

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that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex, or national origin. It shall not be an unlawful employment practice under this title for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 6(d) of the Fair Labor Standards Act of 1938, as amended.

(j) Preferential treatment not required on account of numerical or percentage imbalance. Nothing contained in this title shall be interpreted to require any employer... subject to this title to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by an employer... in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

State Laws Relating to Employment

§ 14-355. Blacklisting employees.

If any person, agent, company or corporation, after having discharged any employee from his or its service, shall prevent or attempt to prevent, by word or writing of any kind, such discharged employee from obtaining employment with any other person, agent, company or corporation, such person, agent, company or corporation shall be guilty of a misdemeanor and shall be punished by a fine not exceeding five hundred dollars ($500.00); and such person, agent, company or corporation shall be liable in penal damages to such discharged person, to be recovered by civil action. This section shall not be construed as prohibiting any person or agent of any company or corporation from furnishing in writing, upon request, any other person, company or corporation to whom such discharged person or employee has applied for employment, a truthful statement of the reason for such discharge.

§ 115C-47. Powers and duties generally.

In addition to the powers and duties designated in G.S. 115C-36, local boards of education shall have the power or duty:

(13) To Elect a Superintendent. — The local boards of education shall elect superintendents subject to the requirements and limitations set forth in G.S. 115C-271.

(17) To Employ Assistant Superintendent and Supervisors. — Local boards of education have the authority to employ assistant superintendents and supervisors pursuant to the provisions of G.S. 115C-278 and 115C-284(g).

(31) Local boards of education shall determine the hours of employment for teacher assistants. The Legislative Commission of Salary Schedules for Public School Employees shall include in its report to the General Assembly recommendations regarding hours of employment for teacher assistants and other employees.

§ 115C-271. Selection by local board of education, term of office.

Each local board of education shall elect a superintendent of schools for a term of one to four years, ending on June 30th of the final 12 months of the contract. The board of education may, with the written consent of the current superintendent, extend or renew the term of the superintendent's contract at any time after the first 12 months of the contract: provided, however, that the current superintendent's contract may not be extended for a term of greater than four years, and provided, further, that if new board members have been elected or appointed and are to be sworn in, the board may not act to extend or renew the current superintendent's contract until after the new members have been sworn in. The term and conditions of employment shall be stated in a written contract which shall be entered into between the board of education and the superintendent. A copy of the contract shall be filed with the Superintendent of Public Instruction before any person is eligible for this office.

Contracts of employment for a period of less than one year shall be governed and limited by

G.S. 115C-275.

It is the policy of the State of North Carolina that the superintendents of each of the several school administrative units be hired solely at the discretion of the local boards of education and that a candidate for superintendent of a local school administrative unit must have been, at least, a principal in a North Carolina public school or have equivalent experience as prescribed by the State Board of Education and have other minimum credentials, educational prerequisites and experience requirements as the State Board of Education shall prescribe. The State Board of Education is directed to promulgate prerequisites for candidacy for superintendent not later than January 1, 1985.

If any board of education shall elect a person to serve as superintendent of schools in any local school administrative unit who is not qualified, or cannot qualify, according to this section, such election is null and void and it shall be the duty of such board of education to elect a person who can qualify.

§ 115C-276. Duties of superintendent.

(j) To Assist the Local Board in Electing School Personnel. — It shall be the duty of the superintendent to recommend and the board of education to elect all principals, teachers, and other school personnel in the administrative unit.

(l) To Maintain Personnel Files and to Participate in Firing and Demoting of Staff. — The superintendent shall maintain in his office a personnel file for each teacher that contains any complaint, commendation, or suggestion for correction or improvement about the teacher and shall participate in the firing and demoting of staff as provided in G.S. 115C-325.

§ 115C-278. Assistant superintendent and associate superintendent.

Local boards of education shall have authority to employ an assistant superintendent, in addition to those that may be furnished by the State when, in the discretion of the board of education, the schools of the administrative unit can thereby be more efficiently and more economically operated and when funds for the same are provided in the current expense fund budget. The duties of such assistant superintendent shall be assigned by the superintendent with the approval of the board of education.

Local boards of education may, upon the recommendation of the superintendent, elect assistant or associate superintendents for a term of from one to four years. The term may not, however, exceed the expiration date of the superintendent's contract, unless the remaining time on the superintendent's contract is less than one year. If there is less than one year remaining on the superintendent's contract, the assistant or associate superintendent shall be given a contract through the next school year.

The term of employment shall be stated in a written contract which shall be entered into between the board of education and the assistant or associate superintendent, a copy of which shall be filed with the Superintendent of Public Instruction as a matter of information. The assistant or associate superintendent may not be dismissed during the term to which he is elected except for misconduct of such a nature as to indicate that he is unfit to continue in his position, incompetence, neglect of duty, or failure or refusal to carry out validly assigned duties.

§ 115C-284. Method of selection and requirements.

(a) Principals and supervisors shall be elected by the local boards of education upon the recommendation of the superintendent, in accordance with the provisions of G.S. 115C-276(j).

(b) In the city administrative units, principals shall be elected by the board of education of such administrative unit upon the recommendation of the superintendent of city schools.

(c) The State Board of Education shall have entire control of certifying all applicants for supervisory and professional positions in all public elementary and high schools of North Carolina; and it shall prescribe the rules and regulations for the renewal and extension of all certificates, and shall determine and fix the salary for each grade and type of certificate which it authorizes. The State Board of Education shall require each applicant for an initial certificate or graduate certificate, other than an applicant who is qualified

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under Article 19A of this Chapter, to demonstrate his academic and professional preparation by achieving a prescribed minimum score at least equivalent to that required by the Board on November 30, 1972, on a standard examination appropriate and adequate for that purpose. If the Board shall specify the National Teachers Examination for this purpose, the required minimum score shall not be lower than that which the Board required on November 30, 1972. The Board may not require an applicant who is qualified under Article 19A of this Chapter to take an additional exam to demonstrate academic competence. The Board shall not issue provisional certificates for principals and assistant principals.

(c1) It is the policy of the State of North Carolina to maintain the highest quality principal and assistant principal education programs in order to enhance the competence of professional personnel certified in North Carolina. To ensure that principal and assistant principal preparation programs are upgraded to reflect a more rigorous course of study, the State Board of Education shall submit to the General Assembly not later than March 1, 1992, a plan to promote this policy. In developing this plan, the State Board shall consider (i) requiring these programs to include additional preparation for site-based decision making and for the additional autonomy being granted to local school units, (ii) enhancing program entrance requirements to include assessment of an applicant's ability to complete the program and to perform as a principal, and (iii) enhancing the overall content of the programs.

The State Board of Education, as lead agency in coordination and cooperation with the University Board of Governors and such other public and private agencies as are necessary, shall refine the several certification requirements, standards for approval of institutions of principal and assistant principal education, standards for institution-based innovative and experimental programs, and standards for improved efficiencies in the administration of the approved programs.

(d) Repealed by Session Laws 1989, c. 385, s. 1, effective June 21, 1989.

(d1) It is the policy of the State of North Carolina that, subsequent to the adoption of a system of classroom teacher differentiation and prerequisites to candidacy for principal, a classroom teacher must have attained at least the second level of differentiation, have at least four years of classroom teaching experience, and possess, at least, a Masters Degree in Education Administration. This subsection shall not apply to educational personnel certified as of July 1, 1984.

(e) It shall be unlawful for any board of education to employ or keep in service any principal or supervisor who neither holds nor is qualified to hold a certificate in compliance with the provision of the law or in accordance with the regulations of the State Board of Education.

(f) The allotment of classified principals shall be one principal for each duly constituted school with seven or more state-allotted teachers.

(g) Local boards of education shall have authority to employ supervisors in addition to those that may be furnished by the State when, in the discretion of the board of education, the schools of the local school administrative unit can thereby be more efficiently and more economically operated and when funds for the same are provided in the current expense fund budget. The duties of such supervisors shall be assigned by the superintendent with the approval of the board of education.

(h) All principals and supervisors employed in the public schools of the State or in schools receiving public funds, shall be required either to hold or be qualified to hold a certificate in compliance with the provision of the law or in accordance with the regulations of the State Board of Education.

§ 115C-299. Hiring of teachers.

(a) In the city administrative units, teachers shall be elected by the board of education of such administrative unit upon the recommendation of the superintendent of city schools.

Teachers shall be elected by the county and city boards of education upon the recommendation of the superintendent, in accordance with the provisions of G.S. 115C-276(j).

(b) No person otherwise qualified shall be denied the right to receive credentials from the State Board of Education, to receive training for

the purpose of becoming a teacher, or to engage in practice teaching in any school on the grounds that such person is totally or partially blind; nor shall any local board of education refuse to employ such a person on such grounds.

§ 115C-315. Hiring of school personnel.

(a) Janitors and Maids. — In the city administrative units, janitors and maids shall be appointed by the board of education of such local school administrative unit upon the recommendation of the superintendent.

(b) Election by Local Boards. — School personnel shall be elected by the local board of education upon the recommendation of the superintendent, in accordance with the provisions of G.S. 115C-276(j).

It is the policy of the State of North Carolina to encourage and provide for the most efficient and cost-effective method of meeting the needs of local school administrative units for noncertified support personnel. To this end, the State Board of Education shall recommend to the General Assembly by November 1, 1984, a system using factors and formulas to determine the total number of noncertified support personnel allotted to local school administrative units. The recommended system for allotting noncertified support personnel shall include the proposed State's funding obligation for these positions and shall be developed in consultation with school-based support personnel or their representatives.

(c) Prerequisites for Employment. — All professional personnel employed in the public schools of the State or in the schools receiving public funds shall be required either to hold or be qualified to hold a certificate in compliance with the provision of the law or in accordance with the regulations of the State Board of Education: Provided, that nothing herein shall prevent the employment of temporary personnel under such rules as the State Board of Education may prescribe.

(d) Certification for Professional Positions. — The State Board of Education shall have entire control of certifying all applicants for professional positions in all public elementary and high schools of North Carolina; and it shall prescribe the rules and regulations for the renewal and extension of all certificates and shall determine and fix the salary for each grade and type of certificate which it authorizes: Provided, that the State Board of Education shall require each applicant for an initial certificate or graduate certificate to demonstrate his academic and professional preparation by achieving a prescribed minimum score at least equivalent to that required by the Board on November 30, 1972, on a standard examination appropriate and adequate for that purpose: Provided, further, that in the event the Board shall specify the National Teachers Examination for this purpose, the required minimum score shall not be lower than that which the Board required on November 30, 1972.

(e) Repealed by Session Laws 1989, c. 385, s. 3, effective June 21, 1989.

(f) Employing Persons Not Holding Nor Qualified to Hold Certificate. — It shall be unlawful for any board of education to employ or keep in service any professional person who neither holds nor is qualified to hold a certificate in compliance with the provisions of the law or in accordance with the regulations of the State Board of Education.

§ 143-422.2. Legislative declaration.

It is the public policy of this State to protect and safeguard the right and opportunity of all persons to seek, obtain and hold employment without discrimination or abridgement on account of race, religion, color, national origin, age, sex or handicap by employers which regularly employ 15 or more employees.

It is recognized that the practice of denying employment opportunities and discriminating in the terms of employment foments domestic strife and unrest, deprives the State of the fullest utilization of its capacities for advancement and development, and substantially and adversely affects the interests of employees, employers, and the public in general.

FOR FURTHER READING:

Allred, "Recruiting and Selecting New School Employees," School Law Bulletin, Fall 1987.

School Management Advisor, Issue 23: Employment at Will.

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School Management Advisor, Issue 24: Reduction in Force.

School Management Advisor, Issue 25: Nonrenewal of Probationary Teachers.

School Management Advisor, Issue 26: Dismissal of Career Status Employees.

School Management Advisor, Issue 27: Negligent Hiring and Retention.

School Management Advisor, Issue 28: Certificate Suspension and Revocation.